

Laws Applicable to the Non-international Armed conflict, Internal Riots and Hostilities

Leyes aplicables al conflicto armado no internacional, disturbios internos y hostilidades

Seyed Ali Moosavy¹

Payame Noor University - Iran
mousavi1978@gmail.com

Zahra Manafi²

Payame Noor University - Iran
zahra.manafi47@yahoo.com

ABSTRACT

We always hear and see much news about protests, demonstrations, riots, and rebellions everywhere around the globe. These protests and riots all have many motives and causes, and in most of these things we always see an initiating reason that provokes anger within the people and forces them into joining these riots, rebellions, and protests. The most important matter is how governments must deal with these issues. What we are considering here is the laws and rules which are applicable to deal with these affairs correctly, and to what extent and under what conditions has “the Human Rights” allowed the governments to deal with such conditions?

Keywords: Human Rights, Protests, Internal Security Operations, Public Emergency, Detention.

RESUMEN

Siempre escuchamos y vemos muchas noticias sobre protestas, manifestaciones, disturbios y rebeliones en todo el mundo. Todas estas protestas y disturbios tienen muchos motivos y causas, y en la mayoría de estas cosas siempre vemos una razón inicial que provoca enojo en la gente y los obliga a unirse a estos disturbios, rebeliones y protestas. Lo más importante es cómo los gobiernos deben lidiar con estos problemas. Lo que estamos considerando aquí son las leyes y reglas que son aplicables para tratar estos asuntos correctamente, y ¿en qué medida y bajo qué condiciones los “Derechos Humanos” han permitido a los gobiernos lidiar con tales condiciones?

Palabras clave: Derechos humanos, protestas, operaciones de seguridad interna, emergencia pública, detención.

¹ Corresponding author. M.A. in International Law from Tehran's Payame Noor University.

² M.A. in International Law from Tehran's Payame Noor University.

Recibido: 13/05/2019 Aceptado: 13/08/2019

1. Introduction

Human beings like the freedom and have the right to express their opinions, in fact humans have the right to express their opinions as long as they do not offend the ethics, laws and religious principles of any society, protests and protest marches are part of the freedom of speech. Governments are required to deal with this issue in a humane way and according to the human rights, and not to perceive every protest, protest march or insurgency as a disturb of public order and security, and a threat to the integrity of a country which leads to treating the protests in an inhumane manner. In fact, principles of the human rights are general in nature and can be applied in whole or in part of all circumstances.

2. Democracy and the Human Rights

“Democracy is based on the freedom of expression of the will of the people. It is mentioned in the Vienna Declaration and Programme of Action: “All the people have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”

Democracy and independence are intertwined in the concept of sovereignty. Democracy is mainly discussed in the internal dimension of sovereignty and independence in its external dimension. Sovereignty is the manifestation of the will of a nation to determine its own destiny without following the will of other nations, and independence expresses national resolve to prevent foreigners from interfering in the affairs of a nation, because disregarding citizens’ right to self-determination of their fate undermines national sovereignty in domestic and foreign affairs, and provides an excuse for the interference of governments, international institutions and even individuals in the internal affairs of the countries.

The issue of the Human Rights, which is closely linked to the concept of democracy, has strongly influenced the traditional concept of sovereignty, in fact national sovereignty and its external dimension (independence) affected by human rights defenders. It is under the influence of new theories of human rights protection that the principle of non-interference in the relations of governments with citizens has been violated. This, with the help of lawyers such as Lauterpacht, took the form of a legal basis that human rights issues should not be considered merely internal affairs, and more clearly, international human rights norms require democratic rule.

Article 21 of The Universal Declaration of Human Rights recognizes that the authority of the State shall be based on the will of the people. The lack of democracy is accompanied by human rights abuses. Because civil and political rights, which must form the basis of democracy, are part of the human rights complex, and human rights violation sparks world-wide reactions that even a powerful country such as China is not safe from the threat to damage its sovereignty over human rights violation. An example of this is the Tiananmen Square protests, which was initially only a domestic matter. However, the importance and relations of China, especially in economic terms with other states, required China to allow the entry of delegates to discuss the human rights situation in China. Eventually, US delegates were dispatched to discuss human rights.

The Vienna Declaration recognized freedom as an integral part of human rights, noting that protecting and promoting human rights is the first responsibility of governments: “human rights and fundamental freedoms are the birthright of all human beings; their protection and promotion is the first responsibility of governments (Shaw, 1993).

The involvement of the international community in the affairs of countries through international institutions and organizations can encompass areas such as international peace and security, environmental protection - humanitarian intervention and the protection of democracy, the protection of the common heritage. In a general division, one can address human rights, peace and security.

3. Non-international Armed Conflict:

3.1 Definition of Non-international Armed Conflict

It is the hostilities that take place within the territory of one state and that the armed forces of another state do not engage in the military operations. There are many reasons to increase the incidence of civil wars,

including colonization movements and ideological rivalries (Shaw, 1993).

From the standpoint of international law, three levels are conceivable for non-international armed conflict: Clause 2 of Article 1 of the Additional Protocol to the Geneva Conventions¹ has excluded the first level of internal hostilities involving riots, sporadic acts of violence and other similar acts. These kinds of conflicts will only remain as human rights. In other words, international law considers this type of armed conflict at “peace time” rather than “war time” status, so a country’s police actions against armed robbers or demonstrators It is subject to the first level of internal conflicts, which International Humanitarian Law are not competent for, but these types of conflicts are within the competence of human rights.

The exact extent of such events is determined when the conditions for reaching the second level of internal hostilities are clarified. Article 3 Common to the quadruple Geneva Conventions, Level Two, sets forth the events that must be covered by the rules of this article and personally suffices to say that armed conflict is not of an international character; However, third Level non-International conflict somewhat defines the territory of the conflict under the jurisdiction of this article, although the boundary between Type II and Type I conflicts remains unclear.

3.2 Types of Non-international Armed Conflicts and the Rights Applicable Thereto:

Non-international armed conflicts are divided into four categories:

Domestic Riots:

Such as violent demonstrations and protests, violent and widespread criminal activity usually associated with illegal weapons or drug trafficking or ransom and kidnapping, even if transgressing national borders and terrorist offenses in these cases are enforced because the events in question are not armed conflict. Like the struggle of the military and law enforcement officers against drug traffickers.

Non-international Armed Conflict: Including:

- Between the armed forces of the state and the rioters or insurgents.
- Happens between two or more armed groups inside a country and government forces play no role except in maintaining peace, and in any case, insurgents, rioters, and armed groups do not exert effective control over that territory.

In such cases, common article 3 of the Geneva Conventions shall apply.

Non-international Armed Conflicts Between the Armed Forces of a Government and Opposition Forces or Other Organized Armed Groups:

Which have been under the command of a leader, have taken control of part of the territory to the extent that they can carry out continuous and coordinated military operations in the area. And be able to enforce the rights which related to the armed conflicts. In this case, the second Geneva 1977 protocol applies.

National Liberation Movements:

In which nations fight colonial domination and occupation by other countries and racist regimes in the exercise of their right to self-determination, “these movements have been dealt with as international armed conflicts and the general principles of armed conflict apply in these cases. In addition, human rights regulations apply to all of these conflicts” (Rogers, & Malherbe, 2008). In this research, what we are looking at is the first one that we will explain.

¹ This protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated sporadic acts of violence and other acts of similar nature.

4. The Causes of Internal Revolts

Historical experience, and in particular the current trend, in many societies shows that the socio-political demands of large groups of people in many cases, especially in countries lacking the necessary support mechanisms, is expressed and realized through the channel of internal riots. Governments, on the other hand, have had to take measures that are often viewed as violent or in violation of citizens' rights in order to maintain security and maintain their sovereignty. (Sharifi Taraz Koochi, 2011) It can be said that if there is no government in a society responsive to the legitimate demands of the people, therefore, there are no fundamental freedoms such as freedom of expression in the country. In such cases, social problems are not solved by the government and the people cannot endure them. Therefore corruption and cruelty become unbearable. Also the system of democracy in those countries is not able to change the governments through the elections so in which the elected governments help to improve the situation, consequently we see uprisings and riots like what is happening in many parts of the world today.

The right to revolt is one of the well-known principles of Locke's theory that is for people who are opposed to the state. (Gouch, 1950)

5. Internal Hostilities

Internal Security Operations

We mentioned that there are four types of armed conflicts, and the point of our research is the first one that includes internal riots, such as violent demonstrations and protests. We now intend to express these kinds of conflicts and the rules and rights applicable to them. In all of these hostilities, demonstrations and riots, the main purpose of government forces to control them is to restore order and domestic security, but what is the definition of internal security? In general, the operations in which the armed forces support civil authorities with the main purpose of maintaining law and order are called internal security operations. Internal security operations vary depending on the severity and deterioration of the situation, and can be operations such as support or surveillance operations, people control or anti-terrorism, hostage releasing and anti-insurgency operations.

Internal security operations resemble peace keeping operations in that they use the lowest range of military operations. Internal security operations have the following characteristics:

Priority of authority of civilian institutions:

In domestic security operations, the armed forces are usually sent on behalf of civilian authorities to maintain or restore law, and the legal rules of the civil and criminal justice system form the framework of their activity.

- In such operations, the minimum use of force is used only to attain legitimate purposes.
- In all of the internal security operations, the armed forces are used to defend the rule of law, so they have legitimacy.
- In all internal operations, the army and other armed forces are used when facilities of police are not sufficient to deal with the situation, so since the military is always operating outside civilian environments, the military must first learn how to act when entering these matters.

Provide specific training in dealing with and behaving in civil settings. It is also important to note that in such cases, the military forces are not regarded as a police force but as an aid to the police in order to maintain law and order and to act in accordance with the law in the areas of the use of force and arrests.

6. Rights Applicable to Internal Security Operations

The precise elements of the legal framework for internal security operations depend on factors such as

the severity and duration of internal unrest and the existence and extent of armed opposition groups, but generally the following rights and rules apply to internal security operations.

Domestic Law:

In internal security operation, it is of course the state domestic law that applies. This law is influenced, however by the norms and standards of international law. (ICRC, Lesson 11, 2002)

The Rights of Armed Conflicts

The law applies to non-international armed conflicts. However, international armed conflict rights may also apply if outside intervention is carried out on behalf of opposition groups. It should be noted that the rights of armed conflict in domestic security operations apply when the conflict has reached the threshold of a armed conflict.

7. Human Rights Regulations

These rules are particularly applicable to the use of force and treatment of detainees. Respecting the international human rights treaties to which a country has acceded as well as customary international law that applies to the military (Rogers, & Malherbe, 2008). Generally speaking, in the matter of insurgencies and internal conflicts, the rule that governs it is most commonly the principles of human rights and that its implementation is more up to governments and governments may refuse to do so when necessary, but some of it is human rights that, as we have said, should not be violated under any circumstances. One of these is the prohibition of torture, which even necessity cannot violate. Those arrested during the riots should not be physically and psychologically abused in any way, and no excuse for committing such acts is accepted.

Inalienable Human Rights

Although in many cases the implementation of human rights is the responsibility of governments, and in cases of necessity, governments may refuse to enforce human rights, but there are some human rights rules that apply in any case, wherever and under any heading. And the conditions that exist are not able to be suspended

Principles and regulations of internal Law

That part of the law which applies to domestic riots, including criminal law relating to the use of force, arrest and detention, as well as any emergency provisions.

Generally speaking, if we want to express the applicable law on armed conflict, we would say that in domestic situations such as riots, as this situation is less than internal armed conflict, domestic law and international human rights law and regulations are enforced. However, if the situation reaches the threshold of non-international armed conflict, Common Article 3 of the Fourth Geneva Conventions and customary international law shall apply and the Protocol II additional to the Geneva Conventions of 1949 if the State is a Party in. In general, human rights treaties have foreseen violations of some human rights standards in times of emergency that threaten the life of a nation. (Rogers, & Malherbe, 2008)

8. Definition of Public Emergency

When a government interferes with the liberties and legitimate rights of the people to defend themselves and, based on its political interests in the opposition, for any action to do so would be in breach of the principle of international guarantees for the protection and observance of human rights. The legitimacy of any public emergency response is estimated on the basis of the severity of the situation. The "general state of Public emergency that threatens the lives of the nation" is the first word in Article 4 of the International Covenant on Civil and political Rights. In international law, the causes of an emergency are listed, but the emphasis is on the "exceptional" nature of the crisis. This exception should be such that the government can decisively declare it at international (or regional) level of emergency and be

concerned about the enforcement mechanisms of the document concerned, the Covenant on Civil and Political Rights or regional conventions to recognize it.

In fact, some real examples for public emergency situation are:

- 1) A potential or actual danger to the nation;
- 2) The inadequacy of the existing legal instruments;
- 3) Legitimacy of the purpose of the concept of an emergency, in fact, should be to preserve and guarantee a “fundamental benefit” that is to “restore” public order and avoid the threat of the principle of statehood. Therefore, discussions such as “national security” or “covert moves to overthrow the government” that primarily cover the political goals of the government are not sufficient to call for a suspension.

The Committee on Civil and Political Rights expressly declares that any disturbance or incident shall not be considered as a public emergency within the meaning of Article 4, paragraph 2, of the Covenant. According to this interpretation, the covenant can only be derogated during armed conflict if the situation is considered a threat to the life of the nation. Consequently, unless the States were empowered to derogate other rules of the Covenant other than the non-suspended rights, it would not be necessary to include this phrase in Article 4 paragraph 3. Therefore, governments have the right to suspend their human rights only insofar as the circumstances warrant (Momtaz & Shaeifi, 1999).

The principle of proportionality in adopting specific measures and suspending rights has also been endorsed by the Human Rights Committee. The principle of proportionality means that the probable result or profit generated after the operation must be commensurate with that which is lost as a result of the action, meaning that the result that is to be obtained is worth more than what disappears.

Suppose in an insurgency they have the intention of destroying a bank, the principle of proportionality has been respected if the police force used tear gas to stop the insurgency, but the principle of proportionality has not been observed if they have shot them, because the value of human life is much greater than the value of the property.

9. The difference between armed conflict and rioting

There has been no precise definition of when an internal conflict is an internal armed conflict or when it is a riot, but it focuses on two aspects of an adversary - The intensity of the conflict and the organizing of the parties of the conflict.

This kind of separation between hostilities is because it sets out the rights and rules that govern them. In an internal conflict such as riots, robberies, terrorist activities and unorganized short-term riots, human rights and domestic law rules apply and international humanitarian law does not apply.

10. The Role of Human Rights Regulations in Situations of Insurgency, Disruption and Unlawful Assemblies

In the event of riots and disturbances and other cases not covered by international humanitarian law, the armed forces of States Parties to human rights, must comply with human rights rules, but these provisions may in certain cases not apply or diminish their application (Except in cases of torture or inhuman or degrading treatment) that must be observed in any case. The purpose of international human rights and armed conflict law is to protect individuals, but international humanitarian law protects individuals from the occurrence of international or domestic armed conflict. But international human rights law protects human rights in an emergency when the life of a nation is threatened are allowed. What we have said is that in the context of riots that do not take place in armed conflict, domestic and international human rights law applies, in fact, domestic law rules regarding the use of force and weapons or the treatment of detainees and individuals must comply with international human rights regulations and norms (Rogers, & Malherbe, 2008).

So, we now want to study how the use of force and the use of weapons and arrest in accordance to the domestic law should be so it complies with international human rights law.

The Use of Force and Firearms in Riots and Unlawful Assemblies

One of the differentiations between military and domestic security operations is the use of force and firearms. The use of firearms is exceptional in internal security operations, and resorting to lethal force is the last resort and impossible without legal authorization.

Government forces may resort to force in the following situations in accordance with domestic law:

- 1) To defend themselves and others
- 2) Prevention of crime
- 3) Control of public assemblies
- 4) Arrest

And to use firearms there must be:

a) Legitimacy: It means using a weapon for a legitimate purposes such as defending yourself and others.
 b) Necessity: It means the necessity to use a weapon and this means that other options have been tried to reach the start target but have not been answered, such as a stop command and an aerial shot before firing a runaway killer.

c) Proportionality: means the use of force must be commensurate with the existing danger and the legitimate aim pursued (Rogers, & Malherbe, 2008). In general, according to international humanitarian law and norms, the use of firearms in domestic security operations is an exceptional measure and should be considered as a last resort. Here is the starting point of the uprising of the Libyan people at the beginning of the year 2011 that the Libyan government forces fired at them as the first reaction to the Benghazi people's demonstration, meaning none of the above happened. Generally, according to international human rights law, the control and dispersal of demonstrations and public protests should remain the primary responsibility of military police officers, and in the first place in order to control and disperse communities should be non-lethal options such as defense equipment, Shields and batons, sprayers and anti-riot gases, and then use the firearm if the foreseeable danger is extreme, and the firearm is permitted if the above methods are used and lead to no results.

10. Definition of Arrest and Detention

'Arrest' means the act of apprehending a person for the alleged commission of an offence or by the action of an authority. 'Detained' person means any person deprived of personal liberty as a result of conviction for an offence. (ICRC, Lesson 12, 2002)

- 1) The cause of arrest must be permitted under domestic or international law, and it must be a crime.
- 2) At the time of arrest, the use of force should be just sufficient to detain and prevent his escape.
- 3) At the time of arrest, the person shall be informed of the reasons for his detention and subsequently of the charges against him.
- 4) The detainee has the right to inform his family of his detention.
- 5) Those detained shall not be subjected to torture or to cruel or inhuman treatment.
- 6) Men and women as well as children and adults shall be kept apart unless they are members of a family.
- 7) The religion and beliefs of the detainees must be respected (Rogers, & Malherbe, 2008).

11. The Role of the International Committee of the Red Cross in internal Security Operations

The International Committee of the Red Cross (ICRC) is one of the organizations that may be in the area of military operations during internal security. The Geneva Conventions and the First Additional Protocol have given the organization special rights to intervene in international hostilities, but it has only a right of initiative in its internal security operations. That means, according to the Statute of the Committee, the ICRC can address any humanitarian initiative in the field of internal Security with its role as a neutral and independent intermediary organization and entity, and consider the need for such an institution to be considered. These may include visiting and registering detainees. However, the ICRC's main objective to visit and register detainees in domestic operations is to prevent their disappearance and to prevent homicides without judicial process and to prevent or halt torture and ill-treatment of detainees and their families.

Conclusion

If a citizen, within the framework of sovereignty, expresses their objection to the functioning of sovereignty. It will reform policies and laws and prevent riots and thus violence, as citizens' political participation in the sovereignty will have a favorable outcome. The universality of human rights, which is more political and economic than humanitarian, cannot be a criterion for measuring governments' compliance with human rights (Rogers, & Malherbe, 2008). The Universal Declaration of Human Rights emphasizes that human beings are born free and have dignity and equal rights. What institution or authority or government is authorized to disregard the inalienable human rights? At times when riots and protests take place and sometimes so large that it becomes a civil war, they will be identified as insurgents if they have certain characteristics. The question was, what rights would they have if they were identified as insurgents how will they be identified?

Why are human rights threatened in today's violence, which is inherently different from the previous ones? If human rights were a system that was primarily designed to block arbitrary government interference in the lives of citizens, would this system be applicable in abnormal situations or just restricted to the peace situation?

Although it is not possible to speak of the extension of human rights obligations, the traditional opposition is no longer responsive to recent developments. It is therefore possible to identify a trend that is moving towards the absolutism of human rights obligations rather than the absolute orientation of the documents of these commitments, as a result, it is bound to move in every situation for every unit and institution, and the declaration of basic standards of humanity seems to be a turning point in this process. In some cases, internal conflicts undermine the normal conditions of life of the nation, in which case, under certain provisions of relevant human rights documents - namely the Covenant on Civil and Political Rights, the European Convention on Human Rights and the American Convention on Human Rights - governments have the right to apply the treaty system in a particular way. It has also been recognized from the outset of the formulation of documents that states should be forced to compromise in exceptional circumstances between national interests and human rights, and by incorporating materials that, under critical circumstances, permit the suspension of certain provisions of these documents on both sides and impede the arbitrary actions of governments, while encouraging the acceptance of the document in question.

Article 4 The Covenant on Civil and Political Rights provides:

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, color, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

In addition to Article 4, of the European Convention on Human Rights, Article 15 and Article 27 of the American Convention on Human Rights, have repeated such statements more or less.

BIBLIOGRAPHICAL REFERENCES

Gouch, J. W. (1950). John Lock's Political Philosophy: Eight Studies. Oxford University Press.

International committee of the Red Cross (ICRC). (2002). Lesson 11: Internal Security Operation- Part A. Retrieved from: https://www.icrc.org/en/doc/assets/files/other/law11_final.pdf

International committee of the Red Cross (ICRC). (2002). Lesson 12: Internal Security Operation- Part B. Retrieved from: https://www.icrc.org/data/rx/en/assets/files/other/law12_final.pdf

Momtaz, J., & Sharifi Taraz Koohi, H. (1999). The minimum Humanitarian Rules Applicable to the Internal Rebels and Riots. Magazine of Faculty of Law and Political Sciences of University of Tehran. 45.

Rogers, A. P. V., & Malherbe, P. (2008). Fight It Right: Model Manual on the Law of Armed Conflict for Armed Forces. (Translated to Persian by: Iran's National Committee of Humanitarian Law) Tehran: Amir Kabir Publications.

Sharifi Taraz Koohi, H. (2011). Hoqooqe Bashar doostane. International Humanitarian Law. Tehran: Boniade Hoghooghi Mizan Publications.

Shaw, M. (1993). International Law, (Translated to Persian by: Vafadar, M.) Tehran: Ettelaat Publication.

International Acts:

- Protocol II additional to the Geneva Conventions.
- Universal Declaration of Human Rights.
- Vienna Declaration and Programme for Action.